

Federal Communications Commission

DA 99-1221

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 99-63
Table of Allotments,)	RM-9398
FM Broadcast Stations.)	
(Shelby and Dutton, Montana))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 16, 1999

Released: June 25, 1999

By the Chief, Allocations Branch:

1. In response to a petition for rule making filed by Shelby Media Association ("SMA"), the Commission has before it for consideration the Notice of Proposed Rule Making, 14 FCC Rcd 2895 (1999), requesting the reallocation of Channel 250C from Shelby, Montana, to Dutton, Montana, and modification of the construction permit for Station KLHK to specify Dutton as the community of license.¹ SMA filed supporting comments in which it reaffirmed its interest in Channel 250C at Dutton. No other comments were received in response to the Notice in this proceeding.

2. Based upon the information presented in this proceeding, we believe the public interest would be served by reallocating Channel 250C from Shelby, Montana, to Dutton, Montana, since it would result in a preferential arrangement of allotments pursuant to the Commission's Change of Community procedures. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Dutton is located in Teton County approximately 32 miles northwest of Great Falls, Montana. Dutton has its own local government, possessing the normal attributes of a small farming town. Dutton, with a population of 392 according to the 1990 Census, would receive its first local service triggering allotment priority (3).² This action will not deprive Shelby of local service as Stations KZIN(FM) and KSEN(AM) are licensed to Shelby.

¹ The call sign for Station KBJF, Shelby, was changed to KLHK effective December 3, 1998.

² The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC Rcd 29 88 (1982).

3. The reallocation proposal is consistent with the requirements set forth in Change of Community, *supra*. Station KLHK is an unbuilt station; thus, the reallocation would not result in the loss of "existing service." See Woodville, Mississippi, et al., 11 FCC Rcd 4712 (1996). Although we carefully evaluate proposals that result in a loss of existing reception service, since Station KLHK is not constructed, we do not consider removal of the channel from Shelby as presenting the same concerns with loss of service that would be represented by the removal of an operating station serving the community.³ We further recognize that neither Shelby nor Dutton are located within an Urbanized Area. However, if a station seeks to change its community of license to one which is outside an urbanized area but whose signal would place a city-grade 70 dBu signal over 50% or more of an Urbanized Area, the proponent is required to provide the same showing as currently required for those parties seeking to move to a community within an Urbanized Area. See Headland, Alabama, and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995). As stated in the Notice, SMA's station already places a 70 dBu signal over 100% of the Great Falls Urbanized Area and that it is not relocating the transmitter site. Under this type of situation, we have not required a Tuck analysis showing that the new community is independent of the urbanized area because of the fact that the transmitter site is not being changed.⁴ This is due to the fact that the station is not "moving into" an urbanized area, but is already serving the area. See Boulder and Lafayette, Colorado, 11 FCC Rcd 3632 (1996) and East Los Angeles, et al., California, 10 FCC Rcd 2864 (1995). Nevertheless, SMA provided a Tuck analysis showing that Dutton is not a suburb of Great Falls and is sufficiently independent of Great Falls to merit a first local service preference.⁵

4. Channel 250C can be allotted to Dutton, Montana, in compliance with the Commission's minimum distance separation requirements at SMA's specified site.⁶ Since Dutton is located within 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian Government has been obtained for this allotment.

³ See Chatom and Grove Hill, Alabama, 12 FCC Rcd 7664 (1997).

⁴ See Faye and Richard Tuck ("Tuck"), 3 FCC Rcd 5374 (1988). Under Tuck, the Commission considers evidence under three factors to determine whether a suburban community deserves a first local service preference: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent community; and (3) the interdependence of the suburban community with the central city.

⁵ SMA provided the following information: 1) the vast majority of Dutton residents work in Dutton; 2) residents are served by the local weekly newspaper, The Dutton Dispatch; 3) community residents view Dutton separate from Great Falls; 4) Dutton residents elect a mayor and city council; 5) Dutton has its own U.S. Post Office and zip code, 59433; 6) Dutton has numerous commercial and civic establishments such as the Dutton State Bank, Dutton Farmers' Elevator Company, Dutton Insurance Associates, Inc., A&P Motors, Inc., Hugh Greyn & Sons Fertilizer Supply and Johnson's Conoco Service Station, as well as three churches, a retirement facility, the Sunset Trail Lodge and an American Legion hall; 7) local businesses advertise primarily in the Dutton Dispatch; and 8) Dutton has its own fire department, town office building, library, water and sewer system, an elementary and high school and its own recreation complex.

⁶ The coordinates for Channel 250C at Dutton are 47-57-46 and 111-39-14.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 9, 1999, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Dutton, Montana	250C
Shelby, Montana	242C1

6. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the construction permit of Shelby Media Association for Station KLHK, Channel 250C, Shelby, Montana, IS MODIFIED to specify operation on channel 250C at Dutton, Montana, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in permit BPH-961114MF except for the community as specified above. Any changes, except those specified, require prior authorization pursuant to an application for construction permit. (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with permit BPH-961114MF, except for the community as specified above, and a license application (Form 302) is filed within 10 days of commencement of program tests.

7. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Shelby Media Association, permittee of Station KLHK, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license from Shelby, Montana, to Dutton, Montana.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau